SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 51

LESLIE MILLER, INC., APPELLANT,

vs.

STATE OF ARKANSAS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

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[fol. 1]

IN THE PULASKI CIRCUIT COURT, FIRST DIVISION

No. 52702

STATE OF ARKANSAS, Plaintiff,

vs.

LESLIE MILLER, INC., Defendant

INFORMATION—Filed September 30, 1954

Comes Tom Downie, Prosecuting Attorney within and for Pulaski County, Arkansas, and in the name, by the authority and on behalf of the State of Arkansas gives information accusing Leslie Miller, Inc. of the crime of violating the provisions of Act 124 of 1939, as Amended (Secs. 71-701 to 71-721, inclusive, Ark. Stats. 1947), committed as follows, to-wit:

Count I

The said Leslie Miller, Inc., in the County and State aforesaid, on or about the 11th day of May, A. D. 1954, did unlawfully engage in business as a contractor without authority from the Contractors Licensing Board so to do, in that at said time and place, said Leslie Miller, Inc. submitted a bid to the United States Government through the Little Rock office of the United States Corps of Engineers for the construction of certain facilities on property owned by the United States Government in Pulaski County, Arkansas, involving the payment for work to be performed under said contract of the sum of One Million Ninety-Three Thousand Four Hundred Thirty-One Dollars ($1,093,431.00), against the peace and dignity of the State of Arkansas.

[fol. 2] Count II

The said Leslie Miller, Inc., in the County and State aforesaid, did unlawfully engage in business as a contractor without authority from the Contractors Licensing Board so to do, in that on or about the 12th day of May, 1954 said Leslie Miller, Inc. executed a contract with the United States

Government through the Little Rock office of the United States Corps of Engineers, in Pulaski County, Arkansas, for the construction of certain facilities on property owned by the United States Government in Pulaski County, Arkansas, which contract involved the payment for work to be performed under the contract of the sum of One Million Ninety-Three Thousand Four Hundred Thirty-One Dollars ($1,093,431.00); and the said Leslie Miller, Inc., thereafter, on or about the 1st day of June, 1954, entered into the performance of said contract, against the peace and dignity of the State of Arkansas.

Tom Downie, Prosecuting Attorney. By J. Frank Holt, Deputy Prosecuting Attorney.

Subscribed and sworn to before me on this 30th day of September, 1954.

Vivan S. O'Neal, Circuit Clerk. By L. W. Rosteck, D. C.

[File endorsement omitted.]

[fol. 3] First Division Circuit Court, Pulaski County, Arkansas

4794

Charles R. Ramsey, et al., Appellants,

v.

Appeal from Pulaski Circuit Court, First Division, The State of Arkansas, Appellee, and

4795

Tecon Corporation,

v.

The State of Arkansas, and

4796

Leslie Miller, Inc.,

v.

The State of Arkansas, and

4797

Engineering Construction Corporation

v.

The State of Arkansas

Mandate of Supreme Court of Arkansas—February 7, 1955

On stipulation of the parties, these causes are remanded to the Pulaski Circuit Court, First Division, for further trial upon additional facts to be presented.

[fol. 4] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 5] FIRST DIVISION CIRCUIT COURT, PULASKI COUNTY, ARKANSAS

[Title omitted]

AMENDED AND SUBSTITUTED STIPULATION—April 1, 1955

It is stipulated and agreed by and between the defendant, Leslie Miller, Inc., through its attorney, Leffel Gentry, and the State of Arkansas, through Frank Holt, Prosecuting Attorney for the Sixth Judicial District, Pulaski County, Arkansas, as follows:

1

Leslie Miller, Inc. did, on or about the 11th day of May, 1954, submit a bid to the United States Government through the Little Rock office of the United States Corps of Engineers for the construction of certain facilities on property owned by the United States Government in Pulaski County, Arkansas, involving the payment for work to be performed in the sum of $1,093,431.00.

2

The United States Government, through the United States Corps of Engineers, Little Rock office, pursuant to the aforesaid bid, awarded a contract to Leslie Miller, Inc., which contract was formally executed in Pulaski County, Arkansas, on or about the 12th day of May, 1954.

[fol. 6]

3

Leslie Miller, Inc. did, on or about the 1st day of June, 1954, begin work which it contracted to perform, pursuant to the aforesaid bid and contract.

4

On the dates aforesaid, Leslie Miller, Inc., was not licensed to engage in contracting work in the State of Arkansas and had not applied for a license to so do, as may be required by Act 124 of 1939 as amended.

5

The land on which the facilities are being constructed by Leslie Miller, Inc., was purchased by the United States Government under the authority of and for one or more of the purposes provided by Article 1, Section 8, Paragraph 17 of the Constitution of the United States, with the consent of the State of Arkansas as provided by Section 10-1101, Arkansas Statutes, (1947, Annotated), but the United States Government has not accepted jurisdiction over said land as provided by Title 40, Section 255, U.S.C.A.

6

The Contractors Licensing Board has filed a complaint with the Prosecuting Attorney of the Sixth Judicial District of the State of Arkansas, alleging that Leslie Miller, Inc., has violated Act 124 of 1939 as amended, in that it [fol. 7] submitted a bid to construct the aforesaid facilities for the United States Government upon land over and upon which the United States Government exercises no police powers and upon land over and upon which the State of Arkansas does exercise police powers, at a time when Leslie Miller, Inc. was not licensed to engage in the business of contracting in the State of Arkansas; and, further that Leslie Miller, Inc. violated the said Act when, pursuant to said bid, it entered into a contract with the United States Government and commenced work under the terms of said contract without first having procured a license to engage in the business of contracting in the State of Arkansas.

7

Bids were received by the United States Corps of Engineers for the construction of these facilities from Contractors licensed to engage in the contracting business in Arkansas, but such bids were in excess of the bid of Leslie Miller, Inc., who was the lowest responsible bidder. The United States Corps of Engineers is required by applicable federal statutes and administrative regulations to award contracts to the lowest responsible bidder.

8

Certain responsible contractors did not bid on the construction of these facilities, because they were not licensed to engage in the contracting business in Arkansas.

[fol. 8] 9

Leslie Miller, Inc. denies that Act 124 of 1939, as amended, is applicable to its activities in placing the aforesaid bid, procuring the aforesaid contract, and performing work thereunder; and this stipulation is entered into for the purpose of agreeing upon the facts applicable to the information filed in this proceeding against said Leslie Miller, Inc. by the State of Arkansas upon the complaint of the Contractors Licensing Board.

(S.) Frank Holt, Prosecuting Attorney, Leslie Miller, Inc., By (S.) Leffel Gentry, Its Attorney.

[fol. 9] First Division Circuit Court, Pulaski County, Arkansas

No. 52702

State of Arkansas, Plaintiff

vs.

Leslie Miller, Inc., Defendant

Judgment—April 1, 1955

On this day, this cause comes on to be heard, the State of Arkansas, appearing by Frank Holt, Prosecuting Attorney within and for Pulaski County, Arkansas, and the defendant, Leslie Miller, Inc., appearing by its Attorney, Leffel Gentry; and both parties announcing ready for trial, the parties specifically waiving trial by jury and agreeing that the cause would be tried before the court upon the amended and substituted stipulation of facts entered into by the parties hereto; and from the information filed herein by Frank Holt, Prosecuting Attorney within and for

Pulaski County, Arkansas, and in the name, by the authority, and on behalf of the State of Arkansas, the plea of not guilty to each count of the information, entered by Leffel Gentry, as attorney for the defendant, Leslie Miller, Inc., the stipulation entered into by the parties hereto, and the argument of counsel, and other matters and things before the court, the court doth ascertain and determine that the defendant is guilty as charged in both counts of the information filed in this cause by Frank Holt, Prosecuting Attorney within and for Pulaski County, Arkansas, and in [fol. 10] the name, by the authority and on behalf of the State of Arkansas.

It is adjudged that the defendant, Leslie Miller, Inc., is guilty as charged and convicted on each count of the information herein.

It is further adjudged that the defendant's punishment is assessed at a fine of $100.00 and costs on Count I of said information and at a fine of $100.00 and costs on Count II of said information.

(S.) Wm. J. Kirby, Judge.

[fol. 11] First Division Circuit Court, Pulaski County, Arkansas

[Title omitted]

Motion for New Trial—April 1, 1955

Comes Leffel Gentry, Attorney for the defendant herein, and moves the court to set aside the verdict and judgment of the court, rendered in this cause, and that he be granted a new trial for these reasons:

1) The verdict and judgment is contrary to the law.

2) The verdict and judgment is contrary to the evidence.

3) The verdict and judgment is contrary to the law and to the evidence.

4) The court was in error in finding the defendant guilty of the crime as charged in Count I and in Count II of the information.

(S.) Leffel Gentry, Attorney for Defendant.

[fol. 12] First Division Circuit Court, Pulaski County, Arkansas

[Title omitted]

Order Overruling Motion for New Trial—April 1, 1955

On this day comes on to be heard the motion for a new trial of the cause filed herein by the defendant within the time and in the manner provided by law; the State of Arkansas appearing by Frank Holt, Prosecuting Attorney for the Sixth Judicial Circuit, Pulaski County, Arkansas, and defendant appearing by its attorney, Leffel Gentry. The Court from a consideration of the motion, the record herein, and being well and sufficiently advised, does overrule the defendant's motion; to which ruling of the Court the defendant then and there excepted, asked that his exceptions be noted of record, which is hereby done, and prayed for an appeal to the Supreme Court of the State of Arkansas, which appeal is hereby granted.

(S.) Wm. J. Kirby, Judge.

[fol. 13] Pulaski County Circuit Court, First Division

Judge's Certificate to Record—April 11, 1955

And now on this day comes the defendant herein and presents to Hon. William J. Kirby, Judge of the Pulaski Circuit Court, First Division, this, his transcript of record herein, which is by the said Judge examined, found to be a complete and correct record thereof, and the same he now approves.

Witness my hand as such Judge of the Pulaski Circuit Court, First Division, on this 11th day of April, 1955.

Wm. J. Kirby, Circuit Judge.

[fol. 14] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 15] SUPREME COURT OF ARKANSAS

LESLIE MILLER INC., et als., Appellants,

v.

THE STATE OF ARKANSAS, Appellee

Appeal from Pulaski Circuit Court, First Division. Affirmed
LEE SEAMSTER, Chief Justice

OPINION—July 4, 1955

In each of these cases, the appellants were found guilty in Pulaski Circuit Court on each of two counts of an information filed by the Prosecuting Attorney of Pulaski County, Arkansas, on behalf of the State of Arkansas. The separate informations charged appellants with violating the provisions of Act 124 of 1939, as amended (Ark. Stats. 1947, Secs. 71-701 to 71-721) in that each of the appellants, without authority from the Contractors Licensing Board, (1) submitted a bid to the United States for the construction of certain facilities at a cost in excess of $20,000 on property owned, or leased, by the United States in Arkansas and (2) thereafter executed a contract to do said construction and entered into the performance of the contract. In each case, appellants were assessed a fine in the sum of $100 on each of the two counts of the information.

The contract with appellant, Engineering Construction Corporation, is for construction of an Air National Guard installation in Sebastian County, Arkansas, on property leased from the City of Fort Smith for that purpose. The other appellants, Ramsey and Leftwich, Tecon Corporation and Leslie Miller, Inc., have contracts for construction of facilities at the Air Force Base in Pulaski County, Arkansas. All of the above contracts greatly exceed the statutory minimum of $20,000. It is agreed that the lands on which the facilities are being constructed were purchased or leased, by the United States with the consent of the State

of Arkansas but that the United States Government has not accepted jurisdiction over the lands as provided in 40 U. S. C. A. 255.

[fol. 16] In each of the instant cases, appellants expressly deny that Act 124 of 1939, as amended, is applicable to its activities in placing the aforesaid bids, procuring the contracts, and performing work thereunder. The appellants contend that the stipulation in each of the cases shows that the lands upon which the contract is to be performed for the agency of the United States Government are either owned or leased by the United States or its agency for one of the purposes mentioned in Article 1, Section 8, Paragraph 17, of the United States Constitution and the State by the provisions of Section 10-1101 of the Arkansas Statutes, Anno., has consented to the acquisition by the United States of these lands, and has relinquished jurisdiction of the lands. The appellants rely upon the case of *Lynch v. Hammock*, 204 Ark. 911, 165 S. W. 2d 369, in which this Court stated: "We think it clear, under the above authorities, that the laws, supra, affecting the practice of medicine and surgery in Arkansas do not control and cannot apply to the rights of Dr. Lynch to practice on property, the jurisdiction over which has been surrendered to the United States, and the title to which property has been acquired by the United States by purchase."

There is nothing in this opinion to indicate that 40 U. S. C. A. 255 was called to this Court's attention at that time or that the statute was considered. On the other hand it is quite apparent that this Court, in deciding the Lynch case considered only two things: (1) had jurisdiction over the lands in question been surrendered by the State to the United States; and (2) had title to the property been acquired by the United States.

40 U. S. C. A. 255, provides in part as follows: "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the

State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or in- [fol. 17] terests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

In the case of *Adams v. United States*, 319 U. S. 312, 87 L. Ed. 1421, the U. S. Supreme Court stated: "Since the Government had not given the notice required by the 1940 Act, it clearly did not have either exclusive or partial jurisdiction over the camp area . . . Since the Government had not accepted jurisdiction in the manner required by the Act, the Federal Court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes authorize the Government to take jurisdiction, since at the critical time the jurisdiction had not been taken." The opinion in the Lynch case was delivered on November 9, 1942. The Adams case was decided on May 24, 1943.

There can be no argument to the well settled principle that state sovereignty is complete except as clearly abdicated to the Federal Government by the Federal Constitution or by legislative act of cession. Therefore, state sovereignty is presumed in the absence of clear and explicit constitutional or legislative enactment to the contrary.

The appellants next contend that Ark. Stats., Sec. 71-701 to 71-721 directly interferes with the performance of federal functions and cannot, therefore, under the doctrine of implied inter-governmental immunity, constitutionally apply to appellants activities herein. It is contended that the enforcement of the provisions of the Act is in contravention of the sovereign power of the United States, as Article 4, Section 3, Clause 2, of the Constitution of the United States, expressly grants to Congress the power to make all needful

rules and regulations respecting property belonging to the United States.

The facts in these cases clearly show that the appellants are independent contractors. The fact that each appellant had a contract, in excess of $20,000, with the United States to construct buildings on United States Government property does not grant to them immunity from the States' law [fol. 18] (Ark. Stats., Sec. 71-701 to 71-721) which requires contractors to procure a contractors license before they can legally bid, contract or perform work on a contract, in Arkansas.

The United States Government is not a party to this suit, nor are the appellants herein, agents or representatives of the United States Government. An independent contractor is not clothed with governmental immunity solely because of his contractual relationship with the Federal Government. A tax imposed upon an independent contractor is not laid upon a government instrumentality. *Ernest K. James v. Dravo Contracting Co.*, 302 U. S. 134, 82 L. Ed. 155, 58 S. Ct. Rep. 208; *Metcalf and Eddy v. Mitchell*, 269 U. S. 514; *Alabama v. King and Boozer*, 314 U. S. 1; *Graves v. New York, ex rel. O'Keefe*, 306 U. S. 466.

By analogy to these tax cases, state regulation of independent contractors has also been sustained in the face of increased economic burdens passed on indirectly to the Government by the independent contractors. *Penn Dairies v. Milk Control Commission*, 318 U. S. 261; *Stewart & Co. v. Sadrakula*, 309 U. S. 94; *Railway Mail Ass'n v. Corsi*, 326 U. S. 88; *E. E. Morgan Co., Inc. v. State, Use Phillips County*, 202 Ark 464, 150 S. W. 2d. 736; *Sollitt & Sons Construction Co. v. Commonwealth of Virginia*, 172 S. E. 290; *Ohio River Contract Co. v. Gordon*, 244 U. S. 68, 37 S. Ct. 599, 61 L. Ed. 997.

Since the appellants admit that they have violated the provisions of the Act, if the act is applicable to them, we must therefore affirm the judgment of the trial court in each of the above cases.

[fol. 19] IN SUPREME COURT OF ARKANSAS

No. 4807-10

LESLIE MILLER, INC., ET AL., Appellants,

vs.

THE STATE OF ARKANSAS, Appellee

Appeal from Pulaski Circuit Court, First Division District

JUDGMENT—July 4, 1955

This cause came on to be heard upon the transcript of record in the Circuit Court of Pulaski County, First Division District, and was argued by counsel, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said Circuit Court in this cause.

It is therefore considered by the Court that the judgment of said Circuit Court in this cause rendered be and the same is hereby in all things affirmed with costs.

It is further considered that said appellee recover of said appellants all her costs in this Court, in this cause expended, and have execution thereof.

In testimony, that the above is a true copy of the judgment of said Supreme Court in the case therein stated, I, C. R. Stevenson, Clerk of said Supreme Court, hereto set my hand and affix the seal of said Court, at my office in the City of Little Rock, this 16th day of November, A. D. 1955.

C. R. Stevenson, Clerk. By Philip N. Gowen, D. C.

[fol. 20] [File endorsement omitted]

IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR REHEARING—Filed July 20, 1955

Come the appellants and pray the court to grant them a rehearing in this cause, for the following reasons:

1. The court erred in holding that the State had not relinquished jurisdiction over the lands acquired by the United States, upon which the facilities were being constructed by the appellants.

2. The court erred in assuming that Act 124 of 1939 was applicable to the appellants, without determining from the objects and purposes sought to be accomplished by the Act whether it was intended to be applicable.

3. The court erred in assuming that if the Act was applicable and the State had not surrendered jurisdiction over the lands where the facilities were in the course of construction, the only remaining question was whether the application of the Act of the appellants interfered with the performance of Federal function, and thereby ignoring the question of whether the Federal Government had the exclusive right to protect itself from unqualified and unscrupulous contractors under the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States, even though the State had not surrendered jurisdiction over the lands where the facilities were being constructed by the appellants for the United States.

[fol. 21] 4. The court erred in holding that Act 124 of 1939, as applied to the appellants under the facts presented, was not an interference with the performance of a Federal function; and the cases cited by the court are not in point, nor are they analogous, for the reason that in each of the cases, the State was exercising solvent power which incidentally and indirectly affected the United States in the exercise of its functions, whereas in the instant case, the application of the Act to the appellants under the facts presented would mean that the State has exercised the perogative of protecting the Federal Government from

unqualified and unscrupulous contractors merely because it has jurisdiction over the lands where the contracts are being performed, in direct contravention of Article 4, Section 3, Clause 2 of the Constitution of the United States, which expressly granted this perogative to Congress.

Wherefore, appellants respectfully pray that they be granted a rehearing and, upon rehearing, the judgment against the appellants be reversed and the causes remanded with directions to dismiss the informations against each of them.

(S.) Leffel Gentry, Attorney for Appellants.

Duly sworn to by Leffel Gentry. Jurat omitted in printing.

[fol. 22] IN THE SUPREME COURT OF ARKANSAS

ORDER DENYING REHEARING—October 3, 1955

Rehearings Denied:

Petitions for rehearing in the following cases were denied:

* * * * * * *

4807-8-9-10. Leslie Miller, Inc., et als. v. State

* * * * * * *

[fol. 23] [File endorsement omitted]

SUPREME COURT OF ARKANSAS

No. 4807

LESLIE MILLER, INC., Appellant

vs.

STATE OF ARKANSAS, Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed December 29, 1955

Notice is hereby given that:

I. Leslie Miller, Inc., appellant, appeals to the Supreme Court of the United States from the judgment of this Court entered on October 3, 1955, denying appellant's motion for rehearing of the Court's decision rendered July 4, 1955, which affirmed judgment of conviction of appellant of violation of certain statutes of the State of Arkansas, rendered by the First Division of the Circuit Court of Pulaski County, Arkansas, on the 1st day of April, 1955.

This appeal is pursuant to the authority provided in Section 1257(2) of Title 28 of the United States Code.

Appellant was convicted of unlawfully engaging in the business of a contractor without authority of the Contractor's Licensing Board to do so, (Count 1) by submitting a bid to the United States, and (Count 2) by executing and performing a contract with the United States, for military construction, in violation of the provisions of Act 124 of the Acts of the General Assembly of Arkansas of 1939, as amended (Sections 71-701 to 71-721, inclusive, Arkansas Statutes, 1947), and was sentenced to pay a fine of one hundred dollars ($100.00) on each count.

II. The clerk will please prepare a transcript of the entire record in this cause for transmission to the clerk of the Supreme Court of the United States.

[fol. 24] III. Questions presented:

1. Whether the enforcement of the provisions of Act 124 of the Acts of the General Assembly of Arkansas for 1939,

as amended (Arkansas Statutes, 1947, Sections 71-701 to 71-721, inclusive), as to the defendant, contracting with the United States, is in contravention of the sovereign power of the United States as expressed in Article 4, Section 3, Clause 2, of the Constitution of the United States.

2. Whether in view of the provisions of Article 4, Section 3, Clause 2, of the Constitution of the United States, and the doctrine of intergovernmental immunity, the aforesaid Act may be constitutionally applied to the defendant under the facts presented, where the object and purpose of the Act in protecting the public health, welfare, and safety are afforded by Federal statutes and regulations.

3. Whether defendant may constitutionally be convicted of engaging in business as a contractor without the authority of the Contractors' Licensing Board, for submitting a bid to the United States, and executing and performing a contract with the United States, for military construction in Arkansas, in violation of the aforesaid Act, (a) when the Arkansas statute substantially impairs the exercise of Federal functions; and (b) where the Arkansas statute is inconsistent with Federal law regulating procurement.

(S.) Leffel Gentry, Attorney for Leslie Miller, Inc., Appellant.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 25] IN THE SUPREME COURT OF ARKANSAS

[Title omitted]

ORDER EXTENDING TIME TO DOCKET CASE—February 21, 1956

Upon motion of the appellant this 21st day of February, 1956, and for good cause shown, the time for docketing this case upon appeal to the Supreme Court of the United States is extended until March 29, 1956.

(S.) Minor W. Millwee, Associate Justice, Arkansas Supreme Court.

[fol. 26] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 27] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—May 28, 1956

Appeal from the Supreme Court of the State of Arkansas.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

May 28, 1956.

(632-0)